

IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA

FILED

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
STEVEN WILLIAM DELIA, M.D.,)
LICENSE NO. 22941,)
)
Defendant.)

DEC 09 2011

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 10-11-4112

COMPLAINT

COMES NOW the Plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Elizabeth A. Scott, Assistant Attorney General, and for its Complaint against the Defendant, Steven William Delia, M.D., alleges and states as follows:

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.*

2. Defendant, Steven William Delia, M.D., holds Oklahoma license no. 22941 and at the time of the incidents in question, practiced family medicine and psychiatry in Sallisaw, Oklahoma.

3. In or around mid-October 2010, Defendant was deployed to Afghanistan to serve in the military as part of the Army Reserve.

4. In November 2010, Board Investigators received information that Defendant had left blank pre-signed prescriptions for use by his employees while he was out of the country. An Oklahoma State Pharmacy Board Investigator reported that prescriptions for Schedule II controlled dangerous substances were being presented at pharmacies when Defendant was out of the country.

5. On or about November 5, 2010, Board investigators travelled to Defendant's clinic in Sallisaw, Oklahoma and learned that Defendant employed three (3) individuals:

LeeAnn Dewberry, LPN, Jennifer Campney, LPN, and Susan Davis, PA. Defendant was the only supervising physician listed for PA Davis at the time of the events in question.

6. When questioned by Board investigators, LPN Dewberry admitted that Defendant had not been in the clinic since mid-October and that she and the other LPN and PA had been treating all patients in his absence.

7. When questioned regarding the use of pre-signed prescriptions, LPN Dewberry admitted that when Defendant was out of the office or out of the country, he left a cabinet full of blank pre-signed prescriptions for use by the two (2) LPNs as well as his PA. At that time, LPN Dewberry turned over **103 unused prescription pads** containing **5625 blank prescriptions pre-signed by Defendant.**

8. LPN Dewberry also turned over a prescription pad sign-out log which showed that 80 prescription pads (each containing 55 prescriptions) had been signed out for use by the two (2) LPNs and the PA between March 1, 2010 and November 3, 2010. The total number of blank pre-signed prescriptions signed out and used by these employees during this period of time was **4330 blank pre-signed prescriptions (17.5 per day).**

9. Further examination of the prescription records reflected that of these 4330 blank pre-signed prescriptions used by these employees, **1959 blank pre-signed prescriptions** were issued by LPN Dewberry, **825 blank pre-signed prescriptions** were issued by LPN Campney, and **1491 blank pre-signed prescriptions** were issued by PA Davis.

10. When interviewed by Board investigators, PA Davis admitted that over the past year, Defendant had been out of the office for numerous occasions for weeks to months at a time due to vacations and military duties. During this time over the past year, she admitted that she regularly utilized the blank prescriptions pre-signed by Defendant to issue Schedule II medications to patients, both new and established, as well as refills of medications to established patients. PA Davis also admitted that she knew that both LPNs were treating patients and using the blank prescriptions pre-signed by Defendant to give prescriptions to patients.

11. PA Davis additionally admitted that at the time of the Board investigation (November 5, 2010), Defendant was not scheduled to return to the United States for almost four (4) more months until February 28, 2011.

12. After returning from Afghanistan, Defendant was interviewed by Board investigators. At that time, Defendant admitted that he did regularly allow his staff to use blank prescriptions pre-signed by him. He admitted that he allowed PA Davis to use them to issue Schedule II controlled dangerous substances to patients, both new and established. Defendant admitted that he did not always speak with PA Davis before her use of his blank pre-signed prescriptions for Schedule II controlled dangerous substances.

13. Defendant also admitted to Board investigators that he allowed his LPNs and his PA to treat patients and issue prescriptions to them by using the blank prescriptions he had pre-signed.

14. When questioned about the 181 blank prescription pads he had pre-signed before he left for Afghanistan, he admitted that he had simply calculated how many prescriptions his staff would need during the approximate five (5) month period he would be gone and he pre-signed all **5625** of these prescriptions.

15. Clinic records reflect that from October 14, 2010, the day Defendant left for Afghanistan, until November 5, 2010, the day Board investigators interviewed clinic staff, the clinic documented **452 patient visits**, with treatment by only the LPNs or the PA, and with **no physician supervision** as required by law.

16. As a result of this practice, LPN Dewberry was able to issue nine (9) prescriptions for Hydrocodone to herself by using the blank prescriptions pre-signed by Defendant.

17. A review of patient records reflects numerous instances where patients were issued Schedule II-V controlled dangerous substances during periods of time when Defendant was out of the office, out of the State or even out of the country, all through the use of the prescriptions he had pre-signed for his staff's use.

18. Under the Oklahoma Nursing Practice Act, nurses are **not allowed** to prescribe any controlled dangerous substances.

19. Under the Oklahoma Physician Assistant Practice Act, Physician Assistants are **not allowed** to prescribe Schedule II controlled dangerous substances in an outpatient setting.

20. Oklahoma Administrative Code Section 435:15-5-11 (b) provides as follows as it relates to violations of the Physician Assistant laws on unprofessional conduct:

(b) A physician who knowingly allows or participates with a physician assistant who is in violation of the above will be prohibited from supervising physician assistants for so long as the Board deems appropriate.

21. Title 21 CFR §1306.05 provides as follows:

Manner of issuance of prescriptions.

(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.

22. Defendant is guilty of unprofessional conduct in that he:
- A. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public in violation of 59 O.S. §509(8) and OAC 435:10-7-4(11).
 - B. Committed any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(9).
 - C. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government or the laws of this state in violation of 59 O.S. §509(7).
 - D. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509 (12).
 - E. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509 (1).
 - F. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509 (11).
 - G. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
 - H. Aided or abetted, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state in violation of 59 O.S. §509(14) and OAC 435:10-7-4(21).
 - I. Failed to provide a proper and safe medical facility setting and qualified assistive personnel for a recognized medical act, including but not limited to an initial in-person patient examination, office surgery, diagnostic service or any other medical procedure or treatment. Adequate medical records to support diagnosis, procedure, treatment or prescribed medications must be produced and maintained, in violation of 59 O.S. §509 (20) and OAC 435:10-7-4(41).

-
- J. Engaged in gross or repeated negligence in the practice of medicine and surgery in violation of OAC 435:10-7-4(15).
 - K. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509(13) and OAC 435:10-7-4(39).

Conclusion

WHEREFORE, the Plaintiff respectfully requests that the Board conduct a hearing, and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to Defendant's medical license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



Elizabeth A. Scott (OBA #12470)
Assistant Attorney General
State of Oklahoma
101 N.E. 51st Street
Oklahoma City, OK 73105
Attorney for the Plaintiff